

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **SEN. BOB HAWKS**, on February 15, 2005 at 3:06 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Jeff Mangan, Chairman (D)
Sen. John Esp (R)
Sen. Kelly Gebhardt (R)
Sen. Kim Gillan (D)
Sen. Bob Hawks (D)
Sen. Rick Laible (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Jim Shockley (R)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Jennifer Kirby, Committee Secretary
Leanne Kurtz, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 309, 2/11/2005; SB 456,
2/11/2005; SB 301, 2/11/2005
Executive Action: SB 253; SB 289; SB 294; SB 300; SB
456

HEARING ON SB 309

{Tape: 1; Side: A; Approx. Time Counter: 0.3}

Opening Statement by Sponsor:

SEN. JERRY O'NEIL (R), SD 3, opened the hearing on **SB 309**, Eliminate distance restriction on organizing municipality.

{Tape: 1; Side: A; Approx. Time Counter: 0.3 - 5.3}

SEN. O'NEIL told the committee that he had a house in the area of Evergreen, although he no longer represented the part of Evergreen. He explained that his former constituents in Evergreen were concerned about their rights. He said that **SB 309** may effect the Target Range area in Missoula and other areas around the state. **SEN. O'NEIL** explained that Evergreen had fewer amenities than Kalispell but they liked it that way because of the lower tax base. He stated that residents of Evergreen find it far easier to have home-based businesses and that the area was an incubator for small businesses. **SEN. O'NEIL** said that **SB 309** would allow Evergreen to continue to preserve tax base and business friendly environment while allowing the residents to craft zoning and land-use regulations that work for them. **SEN. O'NEIL** explained that the city of Kalispell had attempted to strip annex the area that contained Evergreen's Wal-Mart and K-Mart stores, which would have removed a part of Evergreen's tax base and lowered school funding. **SEN. O'NEIL** passed out an email that he received about **SB 309**.

EXHIBIT(los37a01)

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 5.3 - 14.9}

Duart Barons, Target Range Home Owners Association, rose in support of **SB 309**. He said that the bill would give equity to residents in the pre-emptive area as those inside the three mile radius. **Mr. Barons** declared that **SB 309** would allow small communities to grow while preserving their community spirit. He told the committee that these areas were the saviors of rural fire departments and county roads because when cities annex these areas, the departments lose funding and services are reduced. The rural fire departments and county roads are forced to shift their tax base to outlying areas. **SB 309** would preserve the rural areas. **Mr. Barons** said that the bill is not anti-growth but protecting the strong sense of community.

Kerry Finley, Evergreen Business and Property Owners Association, supported **SB 309** because it would provide options to communities outside the city limits. She said that if Evergreen could incorporate, it would preserve "small town Montana." **Ms. Finley** stated that the bill would not hurt any cities and would be an aid to growth.

David McEwen, Target Range Resident, explained that, under current law, cities and towns can forestall the process of incorporation without any opposition. He said that people within the city have more rights than those who reside outside the three-mile radius.

Russ Crowder, American Dream Montana, argued that the three-mile rule was outdated. He noted that Evergreen had its own identity and would benefit from being incorporated. He said that the three-mile limit should go because it was bad for growth and bad for environmental protection.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 14.9 - 27.2}

Alec Hansen, League of Cities and Towns, opposed **SB 309** because it was antagonistic to quality growth. He said that there was no reason to repeal a 100-year-old law. **Mr. Hansen** contended that for efficient cities and towns the government must prevent cities from growing together and provoking jurisdictional arguments. **Mr. Hansen** stated that ten years ago, the law was changed to help real property owners prevent annexation. He noted that for cities and town to be incorporated, they had to have a population of over 300 people. He further noted that if a city attempts to annex an area with a population more than 300, the area residents get a vote on whether or not to be annexed, **Mr. Hansen** said that the distance law was necessary to preserve orderly growth and infrastructure.

Jani McCall, City of Billings, stated that small jurisdictions less effective, have more infrastructure problems, and provide fewer services. **Ms. McCall** contended that **SB 309** would reduce governmental efficiency.

Tim Burton, City Manager of Helena, opposed the bill because the costs outweigh any benefits. He told the committee that **SB 309** would upset the Special Improvement District process and would reduce city's ability to retrofit neighborhoods for safe sewers.

Charles Harball, City Attorney for the City of Kalispell, commented that the bill came up every session. He gave the

committee the history of the area. He explained that several years ago, the county and city got together to organize a cooperative sewer system and created the "love child" of Evergreen. He told the committee that the city did not hold "secret" meeting to plan for the annexation of Evergreen. He said that the community was dysfunctional and had almost no infrastructure and amenities. He contended that Evergreen did not want to incorporate, they wanted to stay exactly as they are. He stated that Evergreen has a huge effect on neighboring cities. Kalispell wants a prospering area next to Kalispell. He said that Evergreen did not have the ability to prosper and it would result in a depressed community.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 27.2 - 31}

{Tape: 1; Side: B; Approx. Time Counter: 1.7 - 3.3}

SEN. JOHN ESP, SD 31, BIG TIMBER, asked **Mr. Hansen** if cities could annex half an area with a population of less than 300. **Mr. Hansen** answered that with an area with less than 300 people, the protest provisions would apply. He noted that if an annexation failed, the city could not try again for a certain amount of time.

SEN. CAROLYN SQUIRES, SD 48, MISSOULA, questioned whether the rule on populations of 300 being allowed to vote was brought up by **SEN. BRAINARD**. **Mr. Hansen** responded affirmatively, that the agreement was reached at that time.

SEN. RICK LAIBLE, SD 44, VICTOR, wanted to know if Evergreen could still be annexed if the bill passed. **Mr. Hansen** said that they could, if they requested annexation and if the city refused, than Evergreen could incorporate under current law. **SEN. LAIBLE** asked if the bill passed, Evergreen had choices. **Mr. Hansen** affirmed that but noted that if the bill passed, many areas would incorporate just to be protected from annexation.

SEN. JIM SHOCKLEY, SD 45, VICTOR, questioned why Kalispell would want to force amenities on Evergreen. **Mr. Harball** answered that they were interested in a good community. He said that they did not want to see Evergreen become a "bubble", as Kalispell grew around the area and the community of Evergreen remained depressed.

Closing by Sponsor:***{Tape: 1; Side: B; Approx. Time Counter: 3.3 - 9.4}***

SEN. O'NEIL told the committee that when the 1905 law was passed, legislators did not foresee the differences that would develop between cities and outlying areas. He noted that the law was originally intended to prevent dual incorporation. **SEN. O'NEIL** explained that small businesses flourished because Evergreen was not part of Kalispell and had fewer restrictions. He discussed the law that required protests to be by real property owners. He informed the committee that Kalispell tried to strip annex a portion of Evergreen and there were only three property owners in the area and now there was only one. He noted that without a population of 300 people, Evergreen could not stop an annexation by Kalispell. **SEN. O'NEIL** said that when the City of Kalispell wanted to build a sewer plant, they had to include the population of Evergreen in order to get federal funding. Evergreen then voluntarily imposed a sewer fee on themselves. **SEN. O'NEIL** told the committee that they had many amenities and that it was a good community, despite not having sidewalks. **SEN. O'NEIL** contended that Evergreen was economically viable and was a valuable asset to Kalispell because of the availability of parking and had a friendly shopping atmosphere. He declared that Evergreen should not have to provide Kalispell's parking. **SEN. O'NEIL** encouraged the committee to pass **SB 309** to protect the citizens of Evergreen and Target Range.

HEARING ON SB 456***{Tape: 1; Side: B; Approx. Time Counter: 10.6}*****Opening Statement by Sponsor:**

SEN. RICK LAIBLE (R), SD 44, opened the hearing on **SB 456**, Prohibit subdivision regulations from including building regulations.

{Tape: 1; Side: B; Approx. Time Counter: 10.6 - 14.6}

SEN. LAIBLE explained that some local governments were using subdivision regulations as a vehicle to enact building regulations. **SB 456** clarified that subdivision regulations could not be used for building regulations. **SEN. LAIBLE** said that the department should be the sole state agency to effect building regulations with the exception of conforming with fire regulations. **SEN. LAIBLE** told the committee that subdivision

regulations stated purpose only applies to the subdivision of land and preservation of open space.

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 14.6 - 29.6}

Michael Kakuk, Montana Association of Realtors and Montana Building Industry Association, supported the bill because it was inappropriate to regulate building codes with subdivision regulations.

Byron Roberts, Montana Building Industry Association, noted that they strongly supported the adoption of building codes. He told the committee that building codes were in a constant state of change nationwide to promote smart growth and protect safety. **Mr. Roberts** explained that the Department of Labor adopted uniform codes and local governments could enforce the codes. He told the committee that the codes are reviewed and replaced regularly. **Mr. Roberts** said that there was a process in place for local governments to request new codes or changes to the codes. He stated that local governments were currently requiring certain things for subdivision approval, and these were things that could not be required under subdivision law. **Mr. Roberts** noted that some things were for health and safety but they needed to be required under building codes, not local subdivision regulations.

Mike Skinner stood in support of **SB 456**. He told the committee that he started manufacturing housing and then was appointed to the state building codes council. **Mr. Skinner** felt that he had practical experience. He said that there were mechanisms for a city or town to utilize the state building codes. He noted that self-governing cities or counties could implement their own codes. **Mr. Skinner** stated that subdivisions should be denied for valid reasons and not because of health and safety codes or building codes. **Mr. Skinner** said that the rules work for ninety percent of the state and that the legislature needed to force cities to follow the proper guidelines. He felt that it was not fair for local governments to do this or the codes will be twisted and not universal.

James Kembel, American Institute of Architects, supported **SB 456** because it forced the standards to be universal and model.

Steve Bullock, Helena Building Industry Association, stood in support of **SB 456** because the bill makes it very clear what local governments can and cannot do. He stated that there was a difference between land use regulations and building codes. **Mr.**

Bullock believed that **SB 456** provides consistency. He said that the legislation should be unnecessary but local governments are misapplying building codes and needed fixing.

Opponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 29.6 - 30.8}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 1.4}

Jerry Grebenc, Director of Planning for Lewis and Clark County, directed the committee to 76-3-504-1 and stated that the bill contradicts the existing code. **Mr. Grebenc** contended that the bill would provide no mitigation for safety hazards, such as wildfires.

Informational Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 1.4 - 2.3}

Harold Blattie, Montana Association of Counties (MACo), said that MACo had received mixed answers from his membership and so he was testifying as an informational witness.

Questions from Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Counter: 2.3 - 14.3}

SEN. SHOCKLEY asked how improved construction techniques were inconsistent with building codes. **Mr. Grebenc** replied that with **SB 456**, the county would not have the flexibility to provide for public safety.

SEN. KELLY GEBHARDT, SD 23, ROUNDUP, wanted to know if zoning was done to adopt building codes. **Mr. Kakuk** answered that zoning was required for building codes. **SEN. GEBHARDT** asked if a city or county could adopt building codes without being zoned. **Mr. Kakuk** responded that they could, as set out in statute.

SEN. ESP questioned **Mr. Grebenc** why the city could not enact the building codes. **Mr. Grebenc** answered that the city could not afford financially to enforce them. **SEN. ESP** asked if they did not pass the bill, the city or county could selectively enforce building codes and that would be cheaper. **Mr. Grebenc** said that it would be adopted to preserve public health and safety but they could not afford to enforce them.

SEN. ESP asked **Mr. Kakuk** about the "inherent contradiction" regarding improved building techniques. **Mr. Kakuk** replied that

the improved construction techniques are in a different section and there was no conflict between the ability to require improved construction and the denial of right to enact building codes.

SEN. BOB HAWKS, SD 33, BOZEMAN, wanted to know whether the building codes should be different between cities and rural building. **Mr. Skinner** answered that the state already has codes but counties do not always follow the state codes. **Mr. Skinner** explained that denser areas follow different codes. He said that there was a cost to all regulations but he "has never seen a fatality because the house has the wrong roof tiles." He felt that some codes need to be strengthened and others could be relaxed. He noted that if a county wanted its own building codes than it needed to get self-governing powers. **SEN. HAWKS** asked whether it was a buyer-beware atmosphere in rural Montana. **Mr. Skinner** replied that he strongly recommended home inspections because of that.

Closing by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 14.3 - 15.8}

SEN. LAIBLE reiterated that subdivisions were different from buildings, that it was land use regulations verses building codes. He said that the two were different sections of the law and overseen by different departments.

HEARING ON SB 301

{Tape: 2; Side: A; Approx. Time Counter: 16.2}

Opening Statement by Sponsor:

SEN. BOB STORY (R), SD 30, opened the hearing on **SB 301**, Revise laws governing mill levies.

{Tape: 2; Side: A; Approx. Time Counter: 16.7 - 21.2}

SEN. STORY explained that his bill revises the mill levy cap that was written in 1999. **SB 301** would bring local government's spending authority into one section. He noted that the major change was **SB 301** would allow counties to impose property tax levys except where prohibited by law. **SEN. STORY** commented that there was a significant difference between "prohibited by law" and "authorized by law." He felt that local governments should be allowed to do anything but what was prohibited by law.

Proponents' Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 21.2 - 24.7}

Harold Blattie, Montana Association of Counties, pointed out that the bill was not an increase in taxes. He said that it merely changed the paradigm from authorize to not prohibited. **Mr. Blattie** felt that **SB 301** would reduce the need for other bills.

Tim Magee, City of Helena, noted that there was no change to tax structure but it would increase flexibility. He said it would also clarify a grey area.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Counter: 24.7 - 32.4}

{Tape: 2; Side: B; Approx. Time Counter: 0.5 - 1.8}

SEN. MICHAEL WHEAT, SD 32, BOZEMAN, asked **SEN. STORY** if the bill really changed anything in law. **SEN. STORY** answered that local governments already have the general powers but the problem was interpreting broad terms. **SEN. WHEAT** wanted to know why they had to list the powers if they already had the power. **SEN. STORY** said that commissioners like to see specific language and be able to reference statutes.

SEN. SHOCKLEY wanted to know if the list was just an index to the statutes. **SEN. STORY** affirmed that. **SEN. SHOCKLEY** asked if the major difference between cities and counties was that cities could do whatever they were not told they could not do and counties could only do what they were told they could do. **SEN. STORY** answered that he thought that the cities and counties either had to be chartered or self-governing.

SEN. LAIBLE asked whether the bill would blue the line between a local government with general powers and self-governing powers. **SEN. STORY** deferred to **Mr. Blattie**. **Mr. Blattie** said that the distinction was general powers had to be specifically authorized and **SB 301** would specifically authorize the power. He stated that it would not delve into self-governing powers because the legislature had to give the cities and counties the power. **SEN. LAIBLE** wanted to know if the bill gave general governments the same rights as a self-governing entity. **Mr. Blattie** replied that it was a limited application.

SEN. KIM GILLAN, SD 24, BILLINGS, questioned why there was overlap with existing code on page 2 of the bill. **SEN. STORY** replied that it did not matter because the section was repealed in the title of the bill.

Closing by Sponsor:

{Tape: 2; Side: B; Approx. Time Counter: 1.8 - 4.6}

SEN. STORY said that it was a local government issue. He wanted to give authority to the local governments because the legislature did not need to waste time telling local governments that they can do a simple project. **SEN. STORY** thanked the committee for a good hearing.

SEN. ESP commented that the other way local governments could do that would be to bring a bill to the legislature.

SEN. STORY reiterated that the local governments should have the authority to levy. **SEN. STORY** contended that the bill gave more flexibility. He noted that the bill did not implement new taxes, it just gave the ability.

EXECUTIVE ACTION ON SB 253

{Tape: 2; Side: B; Approx. Time Counter: 7.7 - 15.3}

Motion: **SEN. ESP** moved that SB 253 DO PASS.

Discussion: **SEN. GEBHARDT** stated that the bill had a valid purpose. If people are being regulated, they should have a vote. **SEN. SHOCKLEY** said that the bill would not work. **SEN. ESP** reminded the committee that the cities' main problem with the bill was how to divide up the wards. He noted that it was not an overwhelming task but could be done. **SEN. HAWKS** commented that there was no good solution and that there was only opposition to the bill. **SEN. GEBHARDT** asked if it was appropriate to set up a precinct or ward where people could vote on regulations that affected them but not on city councils. **SEN. HAWKS** answered that it would lead to a conflicting interest base. He said that it was important to extend services in an organized manner. He questioned **Mr. Blattie, Montana Association of Counties**, about how he felt about the bill.

SEN. MOSS exited.

SEN. GILLAN exited.

Mr. Blattie stated that the bill would mess up precinct boundaries. He noted that precinct boundaries already match school District boundaries and with **SB 293**, they would have to match another set of boundaries and would necessitate another set of voting precincts. **SEN. ESP** commented that there were new precinct boundaries with the new zoning for elections. **SEN. SHOCKLEY** stated that the bill was going to fail and that **SEN. O'NEIL** deserved the courtesy to argue it.

SEN. GILLAN entered.

SEN. ESP withdrew his motion.

EXECUTIVE ACTION ON SB 289

{Tape: 2; Side: B; Approx. Time Counter: 15.3 - 22.6}

Motion: **SEN. LAIBLE** moved that **SB 289 DO PASS**.

Motion: **SEN. LAIBLE** moved that **SB 289 BE AMENDED WITH SB028901.alk**.

EXHIBIT(10s37a02)

Discussion: **SEN. LAIBLE** explained his amendment.

Motion: **SEN. SHOCKLEY CALLED THE QUESTION ON SB028901.ALK**.

Vote: Motion that **SB 289 BE AMENDED** carried unanimously by voice vote. **SEN. MANGAN**, **SEN. SQUIRES**, **SEN. MOSS** and **SEN. O'NEIL** voted aye by proxy.

Motion: **SEN. LAIBLE** moved that **SB 289 DO PASS AS AMENDED**.

Discussion: **SEN. LAIBLE** stated that the bill prevented local governments from trying to license professions that are already regulated by the state. **SEN. WHEAT** asked how they would deal with the fact that **SB 289** was special interest legislation. **SEN. LAIBLE** answered that the bill as amended was not aimed at any particular community. **SEN. SHOCKLEY** questioned that if the reason for the bill was because the Realtors already have their own statutes. **SEN. LAIBLE** said that was correct.

Vote: Motion that **SB 289 DO PASS AS AMENDED** carried unanimously by voice vote. **SEN. MANGAN**, **SEN. SQUIRES**, **SEN. MOSS** and **SEN. O'NEIL** voted aye by proxy.

SEN. SQUIRES entered.

SEN. LAIBLE acted as chairman.

EXECUTIVE ACTION ON SB 294

{Tape: 2; Side: B; Approx. Time Counter: 22.6 - 25.1}

Motion/Vote: SEN. HAWKS moved that SB 294 DO PASS. Motion carried unanimously by voice vote. SEN. MANGAN, SEN. MOSS and SEN. O'NEIL voted aye by proxy.

SEN. HAWKS acted as chairman.

EXECUTIVE ACTION ON SB 300

{Tape: 2; Side: B; Approx. Time Counter: 25.1 - 28.7}

Motion: SEN. SHOCKLEY moved that SB 300 DO PASS.

Discussion: SEN. SHOCKLEY called SB 300 a "bad bill" and said that it would only add bureaucracy. SEN. LAIBLE noted that the state administration did not show up for the hearing and gave no opinion. He agreed with SEN. SHOCKLEY that it was a bad bill.

SEN. MOSS returned.

SEN. WHEAT stated that he recognized that the downtown areas needed some help but he was unsure whether the bill was the right way to go about it. He wondered where the Department of Administration was as well.

Substitute Motion/Vote: SEN. ESP made a substitute motion that SB 300 BE TABLED. Substitute motion carried unanimously by voice vote. SEN. MANGAN and SEN. O'NEIL voted aye by proxy.

EXECUTIVE ACTION ON SB 456

{Tape: 3; Side: A; Approx. Time Counter: 0 - 1.6}

Motion/Vote: SEN. SHOCKLEY moved that SB 456 DO PASS. Motion carried 6-5 by roll call vote with SEN. GILLAN, SEN. HAWKS, SEN. MANGAN, SEN. MOSS, and SEN. WHEAT voting no. SEN. MANGAN and SEN. O'NEIL voted aye by proxy.

ADJOURNMENT

Adjournment: 5:04 P.M.

SEN. JEFF MANGAN, Chairman

JENNIFER KIRBY, Secretary

JM/jk

Additional Exhibits:

EXHIBIT ([los37aad0.PDF](#))